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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

9 THERESA ORTLOFF,

10 Plaintiff,

11 v.

12 DAVE TRIMMER, a Chief of the
Washington State Ferries, *et al.*,

13 Defendants.
14

No. C16-1257RSL

ORDER ON PLAINTIFF'S MOTION
FOR DISCOVERY DEFAULT OR
TO COMPEL DISCOVERY
RESPONSES

15 This matter comes before the Court on plaintiff's "Motion for Discovery Default or to
16 Compel Discovery." Dkt. # 22. Plaintiff seeks an order compelling defendants to produce
17 several thousand emails that defendants mentioned in response to plaintiff's interrogatories.
18 Having reviewed the memoranda, declarations, and exhibits submitted by the parties, the Court
19 finds as follows.

20 In this lawsuit, plaintiff sues her former employer, the Washington State Ferries (WSF),
21 as well as various other WSF employees, for several alleged violations of her constitutional
22 rights, harassment, and retaliation. Plaintiff seeks an order requiring defendants to produce all
23 emails in their possession "related to" plaintiff herself, as well as all emails "related to" six
24 comparator employees. Defendants have indicated that they are willing to produce emails
25 generated by running searches for the seven names in question, but ask plaintiff to provide
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27 ORDER ON PLAINTIFF'S MOTION
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COMPEL DISCOVERY RESPONSES - 1

1 additional search terms so that they might limit the total number of responsive emails to those
2 that are relevant to this case. Moreover, defendants have by now produced an additional batch
3 of emails “related to” plaintiff herself. Dkt. # 28 at 7. Plaintiff still seeks production of the
4 “comparator” emails, as well as emails “related to” plaintiff from the email accounts of other
5 WSF employees, and argues that defendants’ unwillingness to produce all responsive emails is
6 evidence of bad faith.

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8 You don’t need a weatherman
9 To know which way the wind blows.

– Bob Dylan
Subterranean Homesick Blues
© Columbia Records 1965

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11 The ill winds that have blown this discovery dispute into this courtroom are a product of
12 an outrageous posture by plaintiff’s lawyer (seeking a default judgment of \$900,000 for a minor
13 discovery dispute where the primary cause is his own failure to communicate with opposing
14 counsel) and an overly restricted response perspective by the State’s lawyer, who must have a
15 better idea of what relevant documents plaintiff is entitled to even without the benefit of agreed
16 “search terms.” The Court is extremely disappointed in the fact that this motion was filed, and
17 the parties must do a better job of meeting face-to-face and working through future problems
18 related to discovery.

19 Under the Federal Rules of Civil Procedure, parties may generally obtain discovery
20 regarding any non-privileged matter that is relevant to any party’s claim or defense and
21 proportional to the needs of the case. Information need not be admissible at trial to be
22 discoverable. Fed. R. Civ. P. 26(b)(1). During discovery, parties must, without awaiting a
23 discovery request, provide to the other parties a set of initial disclosures, including copies or
24 descriptions of all documents, electronically stored information, and tangible things that the
25 disclosing party has in its possession or control and that the disclosing party may use to support
26 its claims or defenses, Fed. R. Civ. P. 26(a)(1)(A)(ii). Additionally, a party may request the

1 production of certain documents in the other party's control; the party served with such requests
2 for production must comply within 30 days. Fed. R. Civ. P. 34(b)(2)(A). The party seeking
3 discovery may move for an order compelling disclosure or discovery after good-faith attempts to
4 obtain compliance without court action have been unsuccessful. Fed. R. Civ. P. 37(a)(1).

5 Though plaintiff requests entry of default against the defendants as a discovery sanction,
6 the Court concludes that default would be a disproportionately harsh penalty in the context of
7 this relatively minor discovery dispute, where – contrary to plaintiff's hyperbolic assertions –
8 there does not appear to be any evidence of willfulness or bad faith. See Fair Housing of Marin
9 v. Combs, 285 F.3d 899, 905 (9th Cir. 2002) ("In the Ninth Circuit, [default] sanctions are
10 appropriate only in 'extreme circumstances' and where the violation is 'due to willfulness, bad
11 faith, or fault of the party.'" (citations omitted)).

12 Rather, the dispute here appears to result from the parties' failure to cooperate. Plaintiff's
13 attorney was wrong to resist defendants' good-faith effort to provide relevant discovery by
14 refusing the request for additional search terms. Such resistance ultimately creates more work
15 for everyone, including the Court. In addition, the State knows enough about the allegations
16 here to figure out what plaintiff needs: any emails from or to any of the WSF defendants
17 mentioning the plaintiff, plus anything mentioning the comparator employees in the context of
18 their refusing work assignments or showing a lack of mechanical aptitude during their
19 probationary periods.

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21 For all of the foregoing reasons, plaintiffs' motion to compel discovery responses (Dkt.
22 # 22) is GRANTED in part. The parties are directed to meet and confer to establish additional
23 search terms that will assist defendants in narrowing the universe of responsive emails to those
24 that are truly relevant to this litigation. This conference shall take place no later than seven days
25 from the date of this order. Once additional search terms have been designated, defendants shall
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1 produce the narrowed batch of responsive emails no later than Friday, June 16, 2017. To the
2 extent privacy concerns remain, the parties are encouraged to consider a stipulated protective
3 order limiting the use of discovery materials to this litigation.

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5 DATED this 5th day of June, 2017.

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8 Robert S. Lasnik
9 United States District Judge
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